IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8656 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESH @ BHURIO GAURISHANKAR SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR SAMIR DAVE, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

The order of detention dated May 25, 2000 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred on him by sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities

Act, 1985 ("the Act" for short) is the subject matter of challenge in the present petition, which is filed under Article 226 of the Constitution.

2. The order of detention was executed on May 25, 2000. The detaining authority had communicated the grounds of detention to the detenu immediately as required by section 9 of the Act. The detaining authority had thereafter submitted report to the State Government as contemplated by section 3(3) of the Act. On receipt of the report from the detaining authority, the State Government had approved the detention order within 12 days from the date of making of it. The State Government had thereafter referred the case of the detenu to the Advisory Board together with the grounds of detention and other relevant materials. The Advisory Board had considered the materials placed before it and reported that in its opinion there was sufficient cause for detention of the detenu. On receipt of the report from the Advisory Board, the State Government has confirmed the detention order and continued the detention of the detenu. From the grounds of detention, it is apparent that the detaining authority has taken into consideration three cases registered against the detenu under Chapter-XVII of the Indian Penal Code, with Navrangpura Police Station, Kagdapith Police Station and Amraiwadi Police Station of Ahmedabad city in order to form subjective satisfaction that the petitioner is a dangerous person within the meaning of Section 2(c) of the Act. The grounds of detention further indicate that the detaining authority has taken into consideration statements of two witnesses in order to reach the subjective satisfaction that the activities of the detenu as a dangerous person disturbed the maintenance of public order and, therefore, it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

3. Though several grounds have been urged by the learned counsel for the petitioner for challenging the orer of detention, it is not necessary to refer to all of them, except one which in my opinion merits acceptance. The learned counsel for the petitioner submitted that the detaining authority has wrongly exercised the powers under section 9(2) of the Act and as such wrong exercise of powers has resulted into infringement of right of the petitioner to make representation, which is guaranteed under Article 22(5) of the Constitution, order of detention should be set aside. It was pointed by the learned counsel that statement of one witness was recorded on May 19, 2000 and that of another witness was

recorded on May 20, 000 by the Police Inspector, PCB, Ahmedabad city, after which proposal to detain the detenu was made to the detaining authority on May 22,2000 and the detaining authority after mechanically verifying those statements on May 24, 2000, has passed the detention order on the next day and as power under section 9(2) of the Act is exercised mechanically, the petition should be accepted. In support of his submissions, learned counsel has placed reliance on the decision of Division Bench of this Court rendered in Kalidas C. Kahar v. State of Gujarat & Ors. 1993(2) GLR 1659

4. It is relevant to notice that the detaining authority has not filed any reply controverting the averments made in the petition. The record of the case shows that Police Inspector, PCB, Ahmedabad city had recorded statements of two witnesses on May 19,2000 & May 20, 2000 and had thereafter forwarded the proposal to the detaining authority for detention of the detenu. The record also shows that two statements were verified by the detaining authority on May 24, 2000 and the order of detention was passed against the detenu on the next day i.e. on May 25, 2000. Section 9(2) of the Act empowers the detaining authority to withhold disclosure of facts, if it considers such disclosure to be against public interest. At the time of exercising privilege under section 9(2) of the Act, balance is required to be struck between public interest on the one hand and right of the detenu to make representation which is guaranteed under Article 22(5) of the Constitution on the other. The right of the detenu to point out that persons who have made statements are fictitious persons or that statements are bogus, cannot be ignored while exercising powers under section 9(2) of the Act. It is the duty of the detaining authority to strike a balance between the conflicting claims and thereafter to exercise power under section 9(2) of the Act. Exercise of powers under section 9(2) of the Act cannot be treated as an idle formality as it affects valuable right of the detenu to make representation before the competent authority. Looking to the facts of the case, it becomes evident that the detaining authority had no sufficient time to examine possibility of exercising powers under section 9(2) of the Act, as the proposal was made on May 22, 2000 and order of detention was passed on May 25, 2000 after so-called verification of the statements on May 24, 2000. On similar ground, the Division Bench of this Court had quashed detention order in Kalidas C.Kahar (supra). Under the circumstances, I am of the view that because of wrong exercise of powers under section 9(2) of the Act,

right of the detenu to make an effective representation, which is guaranteed under Article 22(5) of the Constitution, is infringed vitiating continued detention of the detenu.

In the result, the petition is allowed. The impugned order of detention dated May 25, 2000 passed by the Commissioner of Police, Ahmedabad City, which is produced at Annexure-A to the petition, is set aside and quashed. The respondents are directed to release the detenu immediately, unless his presence is needed with reference to any other case. Rule is made absolute, with no order as to costs. Direct Service is permitted.

(J.M.Panchal,J.)

(patel)